GOVERNMENT, POLITICS, CITIZENSHIP

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THE TENNESSEE VALLEY AUTHORITY AS A GOVERNMENT CORPORATION*

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AN OUTSTANDING development in the recent administrative experience of the United States Government has been the increased use of government corporations in carrying on the public business. The popularity of the corporate device has been due to the fact that, as noted in the recent Report of the President's Committee on Administrative Management, incorporation of a government agency is generally considered to make possible "freedom of operation, flexibility, business efficiency, and opportunity for experimentation" to an extent "not often obtainable under the typical bureau form of organization."[1] The administrative advantages which the Committee considered characteristic of the corporate form of organization when used for governmental purposes may be grouped into four classes. First, government corporations are customarily financially autonomous units, with a financial structure and financial powers approximating those of private corporations. Second, incorporation of a government agency has usually operated to give it a semi-private status and to confer upon it some degree of freedom from the statutes, regulations, and procedures which are binding upon ordinary government agencies. Third, the corporate form provides a convenient means for limiting sovereign immunity when the government undertakes a business enterprise. Fourth, the corporation affords opportunity for regional decentralization and local autonomy.

The Tennessee Valley Authority was set up as a corporation with the definite expectation that its administrative effectiveness would thereby be increased. President Roosevelt in his message to Congress on the subject suggested the creation of "a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise."[2] The congressional conference report on the TVA bill contained these words: "We intend that the corporation shall have

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[1] "Administrative Management in the Government of the United States" (Washington, 1937), pp. 38, 39. For a discussion of government corporations, see H. A. Van Dorn, *Government Owned Corporations* (New York, 1926); M. E. Dimock, *Government-Operated Enterprises in the Panama Canal Zone* (Chicago, 1934).

[2] *House Document* 15, 73d Cong., 1st sess.

much of the essential freedom and elasticity of a private business corporation."[3]

The TVA, after four years of experience in the administration of a regional development program, has failed to achieve this goal. Although the corporate device has been effective in establishing the Authority as a decentralized regional agency, the corporation has for the most part been denied, or unable to use, the three other types of administrative advantages mentioned above. The following discussion of the Authority's experience in these three fields not only throws light upon the problems of a most interesting organization, but also helps to make clear the potentialities and limitations of the government corporation as an administrative agency.

THE FINANCIAL STATUS OF THE CORPORATION

The financial structure and powers of a government corporation constitute the chief features distinguishing it from the ordinary government bureau, and they make possible the principal administrative advantages inhering in the corporate type of agency. The use of capital stock instead of annual appropriations, the power to issue bonds and to spend revenues, the adoption of commercial methods of accounting and financial reporting, the right to be judged by annual reports and balance sheets rather than by a minute scrutiny of detailed transactions—these characteristics are of great value when the government undertakes to administer an economic service or a proprietary enterprise. By the same token they are quite likely to be valueless in connection with a noncommercial enterprise, whose program is not autonomous and self-supporting, and which is without revenues sufficient to carry the operations after the original grant of capital. Yet the TVA program is precisely of this latter character. During its first three years, the corporation expended $99,413,313.95 on its varied projects of dam construction, electricity production, fertilizer and agricultural development, and regional planning.[4] Against this total expenditure, the only important revenues were those from electricity operations, amounting to $2,585,209.60.

With a progam of this nature, there obviously has been no opportunity for adopting commercial methods of financing. The corporation of necessity has relied upon annual appropriations from Congress, and has been subject in most respects to regular appropriation procedure. Its budget is prepared annually on the basis of the governmental fiscal year, and estimates of requirements are submitted to the Bureau of the Budget for review and revision.[5] Beginning with the fiscal year 1936, the financial needs of the TVA and three other "self-supporting or self-contained units of the Government"[6] have been carried in the United States budget by means of an annexed budget, from which only the net appropriation requirements are carried over into the budget summary. The desirability of annexed budgets for governmental units of this type is well recognized, but in the case of the TVA the revenues are so small in comparison with the expenditures, and the corporation's budget is so completely out of balance,

[3] *House Report* 130, 73d Cong., 1st sess.

[4] The total is allocated by the TVA as follows: dam construction, $81,345,549.79; electricity program (gross), $10,039,317.32; fertilizer and agricultural development, $5,078,867.42; national defense, $2,035,965.14; and regional planning projects, $913,614.28. See *Annual Report*, 1936, pp. 123, 127.

[5] Required by Executive Order No. 7174, September 4, 1935. However, the TVA had voluntarily submitted to Budget Bureau control long before this order was issued.

[6] The Post Office Department, the Reconstruction Finance Corporation, and the District of Columbia. See *The Budget, 1936*, pp. xiv-xv.

that the value of an annexed budget is almost entirely theoretical.[7]

In the first two appropriations to the TVA, regular procedures were not followed, largely because of the emergency situation. The initial appropriation of $50,000,000 was made available until expended, without the usual fiscal year limitation.[8] The second grant of funds was a $25,000,000 allocation by the President from emergency appropriations.[9] But beginning with the fiscal year 1936, regular procedures have been adopted. The TVA appropriation is regularly carried in one of the deficiency appropriation acts. The directors of the corporation appear before the congressional appropriations committees with itemized estimates of financial needs. The appropriation finally agreed upon by Congress is voted to the TVA in a lump sum, but the corporation recognizes its obligation to allocate funds on the basis of the estimates approved by the congressional committees.

The original TVA Act authorized the corporation to issue bonds for the construction of dams, steam plants, or other power facilities.[10] The corporation has never sought to raise funds under this provision, for the sound reason that the corporation did not expect revenues sufficient to finance these bonds until the power program had a chance to establish itself.[11] When the TVA Act was up for amendment in 1935, the corporation suggested that the bond provision be revised to permit the TVA to issue bonds for the purpose of acquiring private electric distribution systems. Congress, however, substituted a provision merely permitting the TVA to issue bonds for the purpose of extending short-term credit to municipalities or other public agencies wishing to acquire distribution systems. The original bonding section was also allowed to remain. Neither of the bond authorizations is adapted to the needs of the corporation, and its directors have disclaimed any intention of issuing bonds.[12]

Revenues received by the corporation may be used in its program, and are not required to be covered immediately into the Treasury, as is the customary government practice. Although proceeds must be turned over to the Treasury at the end of each calendar year, the corporation is authorized to withhold such sums as are necessary in the operation of its dams and reservoirs and in conducting its business enterprises. Since the revenues are not sufficient for these purposes, there are no net proceeds for covering into the Treasury.

Because of its inadequate revenues, the corporation has been able to build up no reserves in the usual sense. The closest approach is the peculiar $1,000,000 continuing fund which Congress authorized the corporation to maintain in order "to defray emergency expenses and to insure continuous operation."[13] In practice this merely means that the corporation must never draw on the last million dollars of its annual appropriation, except to meet threatened emergencies.

The TVA Act contains no provision relating to amortization of the govern-

[7] It is recognized that this situation will be changed when power revenues become more substantial and the construction activities taper off.

[8] Public No. 77, 73d Cong.

[9] Authorized by Public No. 412, 73d Cong.

[10] This provision was included at the suggestion of President Roosevelt, as a result of his experience with the Port of New York Authority. See 77 *Congressional Record* 2662.

[11] Statement of Mr. Lilienthal, Hearings before House Military Affairs Committee, "Tennessee Valley Authority," 74th Cong., 1st sess., p. 68.

[12] Hearings before House Subcommittee in charge of Deficiency Appropriations, "First Deficiency Appropriation Bill for 1936," 74th Cong., 2d sess., p. 348.

[13] Public No. 412, 74th Cong., sec. 10.

ment's investment in the corporation's dams. However, Congress has shown on several occasions that it expects a substantial return on this investment, and the subject will no doubt eventually be dealt with by legislation. The corporation has made public a detailed amortization plan by which the annual net revenue from the sale of power would return the total estimated cost of the program within 50 years from the date of completion of the structures and development of a market for the power output (estimated at from 1940 to 1950).[14]

The TVA has not been able to issue the customary corporate financial statements. In its first annual report a balance sheet was presented which did attempt to follow commercial practice.[15] Standard classifications were used, and expenditures which did not create physical assets, such as those for planning and research purposes, were excluded from the balance sheet. The next year, however, the attempt to follow commercial procedure was abandoned. A so-called "balance sheet" was issued, but it was nothing more than a report to Congress on the use of appropriated funds.[16] In 1936 this fact was recognized by changing the name of the statement to "statement of application of funds."[17]

The problem of adopting commercial accounting methods arises chiefly in connection with the power program. The Authority has readily conformed to the congressional requirement that it adopt the uniform system of accounts for public utilities prepared by the Federal Power Commission. Of far more importance than the accounting system, however, is the question of allocating capital costs which is raised by the multiple-purpose nature of the Authority's dams. The establishment of a valuation for Wilson Dam (which supplied all TVA power for the first three years) has recently been made and approved by the President, but the Authority has as yet been unable to allocate the value of the property between flood control, navigation, power, and other purposes served by the dam.[18] Pending determination of the costs chargeable to power, there has been no definite valuation base with reference to which the corporation could fix its power rates, nor has it been possible to issue profit and loss statements or to depreciate the major power properties. The fact that the Authority, as a government agency, can charge off a part of the cost of its capital structures to navigation and flood control constitutes the gravamen of the private utilities' charges that the TVA is an unfair competitor and that its rates are not "yardstick" rates.[19]

In summary, it should be made clear that the financial structure and practices of the Authority cannot be understood, and that the situation as above presented may be misconstrued, unless it is realized that the TVA is not a commercial organization and cannot be judged as one. The failure to comprehend this fact underlies most of the attacks which have been made on the authority's financial operations. In its broadest terms, the Authority's task is that of unified water control in the interests of regional development. Power, which absorbs most of the public interest in the TVA, is constitutionally and actually an incident in the larger program.

[14] Hearings, "First Deficiency Appropriation Bill for 1936," *op. cit.*, pp. 278–79.

[15] *Annual Report*, 1934, pp. 56–57.

[16] *Ibid.*, 1935, p. 63.

[17] *Ibid.*, 1936, pp. 122–23.

[18] Letter from Vice-Chairman H. A. Morgan, *Congressional Record*, July 8, 1937, p. 8915.

[19] C. E. Troxel, "The TVA Potpourri," *Public Utilities Fortnightly*, XVIII (1936), 231–40, is representative of this viewpoint.

Revenue from this source has not been expected, and should not be expected, to carry the cost of all the corporation's activities, even with the recent rapid growth in power sales. The TVA program,in its motivation and characteristics, is governmental rather than commercial, and the adaptation of the corporate form of organization to this program has required that most of the typical corporate financial characteristics be abandoned.

THE CORPORATION'S STATUS UNDER FEDERAL LAWS

The general conduct of government business is controlled by a great number of statutes adopted for the praiseworthy purpose of preventing misuse of public funds, but which, because of their strictness and the formalism they impose, too often bind government administration in red tape and sacrifice efficiency to scrupulous legality. Although the obligation of a government corporation to adopt the administrative procedures specified by federal statutes and regulations for other government agencies is a question on which there is great confusion,[20] the general tendency has been to regard the mere fact of incorporation as giving an agency a special status and freeing it from the procedures binding upon unincorporated government agencies. This freedom has been one of the substantial administrative advantages in the use of the corporate form.

Corporate immunity of this sort, insofar as it has been rationalized, rests upon the theory that incorporated agencies are semi-private in nature, not carrying on enterprises of the regular governmental type, and so deserving of exceptional treatment. The Panama Railroad Company was the first American government owned corporation in recent times. This enterprise, after its purchase by the government in 1904, was permitted to proceed with much the same type of administrative practices developed in its previous experience as a private competitive concern. Questions as to its administrative powers were largely determined by reference to the principles of private corporation law.[21]

Again, the government corporations created during the World War assumed that their corporate form released them from regular government procedures in order to expedite essential public services. Most of these war-time corporations were liquidated before their status could be questioned, but the Emergency Fleet Corporation continued in existence, and became involved in a number of controversies which required the Supreme Court to give official interpretations of its nature and powers. In a leading case the Court held that the Budget and Accounting Act of 1921 did not apply to the corporation chiefly because of the corporate status of the agency. The Court said:

> Indeed, an important, if not the first reason, for employing these incorporated agencies was to enable them to employ business methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States.[22]

Thus the Supreme Court recognized in this case, as well as in several others,[23]

[20] See O. P. Field, "Government Corporations: A Proposal," *Harvard Law Review*, XLVIII (1935), 775.

[21] 30 Op. Atty. Gen. 508.

[22] *Skinner and Eddy Corp.* v. *McCarl*, 275 U. S. 1 (1927).

[23] A suit against the corporation was held not to be a suit against the United States in *Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549 (1921); employees of the corporation were held not to be employees of the United States in *United States* v. *Strang*, 254 U. S. 491 (1920). On the other hand, the corporation was held to be a government department under the Post Roads Act in *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415 (1928); and defrauding the corporation was held to be equivalent to defrauding the United States in *United States* v. *Walter*, 263 U. S. 15 (1923).

that government corporations had a special and semi-private status merely by reason of their corporate form of organization. Even the Comptroller General was willing to treat the Fleet Corporation as a private corporation when it was actively engaged in the shipping business, although he held it to be a government agency when it was carrying on non-commercial functions such as are common to other government agencies.[24]

When the TVA was created, its officials, taking note of the experience of the earlier corporations, assumed that the Authority enjoyed some degree of freedom from regular federal statutes and administrative regulations. The corporation never maintained that it should have the freedom of a private agency, but it did contend that, because it was a corporation, "the acts of Congress relating to contracts, expenditures and accounting and budget control, which refer only to government departments, agencies and/or bureaus, are not legally applicable to or binding upon it."[25] The Authority took the position that "upon all questions of its status, powers, and duties, the Act of Congress by which it was created and which constitutes its charter is controlling, and that wherever the letter or spirit of that Act is in conflict with general statutes or Government regulations, such statutes or regulations must yield to the basic law."

In spite of this contention, the Authority did in practice attempt to conform "with all general statutes and Government regulations governing the use or expenditure of public funds insofar as such compliance does not substantially interfere with the efficiency of our operations." Thus, in the important field of procurement, the system adopted was based upon that used by the Navy Department; government forms were employed, and the necessity for advertising, competition, and award to the lowest responsible bidder was recognized. However, corporation officials assumed that they had a degree of discretion which could be exercised when good business judgment demanded it, and, relying upon this interpretation of the corporation's powers, they made a number of purchases by methods which were apparently at variance with the procedures prescribed by federal statutes as interpreted by the Comptroller General. For instance, low bids were rejected in cases where a slightly greater expenditure would secure a much superior product or one with excess capacity, where the experience of the low bidder was inadequate, where it was desired to secure different makes of equipment for comparative purposes to guide future buying, where previous experience had proved the low bidder's equipment to be unsatisfactory, and so on.

Similarly in other fields the Authority established administrative procedures which appeared to contravene general federal statutes. Because the Authority was subject to suit in the courts, it adopted a procedure for handling claims brought against it, so that as many cases as possible could be settled by compromise out of court. In the regular government service claims can be finally settled only by the Comptroller General.[26] The corporation carried on its extensive land acquisition program entirely with its own personnel, and did not act through federal district attorneys, nor condemn land through the Department of Justice, nor secure the Attorney General's approval on the title of all lands purchased, as the statutes require regular government agencies to do.[27] Printing services were occasionally secured from private firms, al-

[24] *House Document* 111, 71st Cong., 1st sess., p. 44.

[25] Quoted from unpublished TVA reply to the Comptroller General's audit report for the fiscal year 1934.

[26] 31 U. S. C. A. 71.

[27] 40 U. S. C. A. 255–257.

though the general requirement is that printing for government agencies be performed at the Government Printing Office.[28]

Corporate practices of this type were finally challenged by the Comptroller General, whose audit constitutes the principal method by which federal statutes are enforced upon regular government agencies. This audit is not, of course, a commercial audit, but primarily an examination of each expenditure to determine whether it was made pursuant to congressional authorization. Because of this fact, the relationship between a government corporation and the General Accounting Office is the most important single factor determining the degree of administrative freedom which the corporation will be able to attain. The typical American government owned corporations have not been subject to the Comptroller General's audit.[29] The TVA Act, on the contrary, did make the Authority's operations subject to such audit, but the language of the act seemed to indicate that it was to be an annual audit of a commercial nature such as a private firm of accountants would conduct, rather than the regular governmental continuous audit.

When the TVA commenced operations, the Comptroller General, who had consistently opposed the granting of any unusual privileges to government corporations, requested the TVA to submit its accounts to Washington for the regular audit. He subsequently agreed, however, that a postaudit in the field was required by the statute. The TVA's accounts for the fiscal year 1934 were audited in this manner, and an audit report submitted to Congress, which took exception to over $2,000,000 of the corporation's expenditures on the ground that general federal regulatory statutes governing the use of funds had not been followed.

This audit report was made public in April 1935, just as Congress was engaged in preparing amendments to the TVA Act, and centered congressional attention upon the corporate status of the Authority. Proposals which would have definitely confirmed the Comptroller General's audit control over the corporation and its obligation to comply with general federal statutes were defeated by Congress,[30] but no language was added which would clarify the ambiguous audit provision in the TVA Act. Thus the two parties were left to fight out their own battle.

In September 1935 the Comptroller General discontinued his field audit of Authority transactions for the fiscal year 1935, which was then in process, and demanded that the TVA submit its accounts to Washington for the regular government audit. As justification for requiring this changed procedure, the Comptroller General pointed to a phrase in the Authority's appropriation for the fiscal year 1936 which provided that all moneys available to the corporation should be "covered into and accounted for as one fund."[31] It was his contention that the phrase "accounted for" entirely changed the status of the funds available to the TVA, and made the regular accounting procedure applicable.

This position seems untenable, considering the fact that the TVA had itself suggested that this provision be inserted

[28] 44 U. S. C. A. 111.

[29] This is true of the Inland Waterways Corporation, the Reconstruction Finance Corporation, and the Panama Railroad Company. The Merchant Fleet Corporation had its accounts audited by the Comptroller General, but Congress specifically required the audit to be of a commercial nature (42 Stat. L. 444; 44 Stat. L. 1083).

[30] H. R. 8632, 74th Cong., sec. 13; 79 *Congressional Record* 9853–54.

[31] 49 Stat. L. 597.

merely in order to simplify its bookkeeping, and that Congress had explicitly refused to adopt an amendment making the TVA subject to the regular government audit. However, the Comptroller General was in a superior strategic position, since he possessed the power to cut off the corporation's funds through refusal to countersign accountable warrants drawn by it upon the Treasury. On January 6, 1936, the TVA agreed to meet the Comptroller General's terms, and to submit its accounts, with all supporting vouchers, contracts, and other papers, to the General Accounting Office for audit. Accounts are now submitted on a monthly basis, as in the regular government departments.

Questions as to the Authority's procurement methods were also raised before Congress in 1935, and in both houses attempts were made to enact legislation requiring the TVA to follow government purchasing statutes and procedures,[32] but they were defeated. Instead, an amendment was inserted in the TVA Act requiring awards to be made on the basis of competitive bidding, except in cases of emergency, in the securing of repair parts or supplemental equipment, and in the procurement of supplies or services not exceeding $500. The Authority was also authorized to take into account, in comparing bids, such factors as quality, time of delivery, and the bidder's experience and responsibility. The amendment was a reasonable re-writing of Section 3709 of the *Revised Statutes*, and seemed to give complete support to the Authority's contention for greater freedom in purchasing operations.

In actual practice, this amendment has not been so effective as might have been expected. All Authority contracts are filed with and examined by the General Accounting Office, which considers that Section 3709 is still applicable to the TVA, and requires that regular government standards and procedures be used. Specifications must be broad enough to convince the Comptroller General that full competition is permitted, and he has held up awards where the specifications appeared to limit competition. The chairman of the TVA board has publicly protested against the "red tape" and "bureaucracy" of the corporation's purchasing procedure,[33] but the purchasing officials are reconciled to the Comptroller General's review. Compliance with his regulations is at all times a foremost consideration in procurement, and in all cases where he has raised questions concerning TVA purchases he has finally approved the transactions.

In the field of personnel, the Authority has not had so much difficulty in maintaining its freedom from regular government procedures, since the TVA Act specifically exempted the Authority from the operation of civil service laws. To prevent abuse of this freedom, the act required the selection and promotion of personnel to be on the basis of merit and efficiency. The Authority has been notably successful in developing a system of recruitment under these provisions which blends the merit principles of the civil service with a degree of flexibility, speed, and concentration upon fitting the individual to the job which the civil service system has not achieved. TVA recruitment methods differ from those of the civil service in placing greater emphasis upon the discretion and judgment of supervisors and less upon examinations and mechanical standards. However, examinations are given and registers established for certain types of positions, and every effort is made to

[32] 79 *Congressional Record* 7298; H. R. 8632, 74th Cong., sec. 13.

[33] Address before TVA employees, July 29, 1936.

develop useful objective standards for judging applicants.

Although exempt from the Classification Act, the TVA has maintained its salary schedule in close relation to regular federal levels. On November 18, 1933, the President issued an Executive order applicable to the TVA and nine other emergency agencies, establishing a compensation plan with 19 grades and no provision for salary steps within grades. The Authority took the position that compliance with the schedule was optional, on the ground that the TVA Act left the fixing of compensation to the discretion of the TVA board of directors.[34] Actually, however, the schedule was adopted for positions below $4,000, but in the higher brackets some additional gradations were inserted.

As the TVA outgrew its emergency status, the defects of this salary schedule became apparent, and in January 1937 it was superseded by one which more closely approached the Classification Act schedule, entrance rates being the same in all except four grades. Salary steps within grades were also provided, but under a different plan from that used in the classified service, where there are customarily seven steps in a grade and annual advances are dependent upon the employee's securing the required efficiency rating. The new TVA schedule covers the Classification Act salary ranges with only three steps in a grade, and advancement from the entrance to the standard rate is automatic after a year of satisfactory service.[35] Employees rated by their supervisors as unsatisfactory at the semi-annual rating period are required to be transferred, demoted, or dismissed. It should be added that in the actual process of classifying positions, the TVA attempts to follow federal practices closely, and to rely upon the standards and methods of the United States Civil Service Commission.

[34] The President apparently agreed with this interpretation, for in his second Executive order (No. 6746, June 21, 1934) on the same subject the TVA was not included. In a similar fashion the Authority contended that the Economy Act was not applicable to its employees, but voluntarily made the required reductions in salary.

[35] The maximum rate may be awarded only for exceptionally meritorious service.

GOVERNMENTAL IMMUNITIES OF THE CORPORATION

The only important governmental immunity which the corporation does not enjoy is immunity to suit. In the field of taxation, the Authority's properties share the regular federal exemption from state and local taxation.[36] However, section 13 of the TVA Act provides for payment to the states of Alabama and Tennessee of 5 per cent of the gross proceeds from power generated at dams in the two states, and these payments are regarded as in lieu of taxes. Under this provision the TVA paid, during its first three years of operation, to the state of Alabama the sum of $101,822.54.[37] Since the completion of Norris Dam the state of Tennessee has also begun to share in these payments. The TVA has recognised that 5 per cent of the gross power receipts is not equivalent to the taxes paid by private utilities, which were found to average about 12½ per cent of gross revenues. The Authority therefore set up in its accounts for taxes an additional 7½ per cent, so that its advantage in this field would be offset, at least for bookkeeping purposes.[38]

As a federal instrumentality, the Authority has felt that it could not submit to regulation and control of its power operations by the utility commissions in the

[36] "State Taxation and Regulation of the Tennessee Valley Authority," 44 *Yale Law Journal* 331 (1934).

[37] *Annual Report*, 1936, p. 127.

[38] Hearings before House Military Affairs Committee, *op. cit.*, 74th Cong., 1st sess., p. 74.

states where it operates. When the Alabama Public Service Commission was asked by the Alabama Power Company in 1934 to approve the sale of certain of its properties to the TVA, intervening coal and ice companies alleged that the TVA had no right to engage in the public utility business in Alabama except in subordination to the state laws, and that the Authority had no intention of seeking a certificate of convenience and public necessity or otherwise subjecting itself to the laws of Alabama as a utility. The Commission, although approving the sale, held that the Authority was "a utility as defined by the statutes of Alabama, engaged in a proprietary business and not a governmental function, and is therefore subject to regulation as a utility under the laws of Alabama."[39] Controversy over this ruling was resolved when the Alabama legislature passed an act defining federal agencies such as the TVA as non-utilities, over which the Commission should have no jurisdiction.[40] Likewise in Tennessee the legislature removed the Authority from the control of the state commission.[41]

CONCLUSION

From this brief discussion it is apparent that, in most fields, the corporate status of the TVA is no longer of substantial administrative value. Its financial powers, its administrative procedures, and its immunities are typically governmental rather than corporate. The Authority's experience has demonstrated the inadvisability of giving a corporate form of organization to a non-commercial enterprise. It should be noted that when a corporation was first suggested in connection with utilization of the Muscle Shoals properties, it was planned as a commercial organization selling power and manufacturing fertilizer. The regional planning functions and the non-commercial activities given the Authority by the TVA Act destroyed the original justification for the use of the corporate form and made it impossible for the TVA to operate with the administrative freedom characteristic of earlier corporations.

Although generalizations can hardly be made on the basis of one case, the Authority's experience does call attention to important alterations in the privileges and powers of government corporations within the last few years. The mere fact of incorporation no longer suffices to withdraw a government agency from the operation of federal statutes or to secure the relaxation of regulations in the interests of administrative flexibility and freedom. The earlier corporations made good their claims to administrative freedom for a number of reasons. For one thing, the scarcity of such agencies made it easier for them to secure exceptional treatment. Since statutes regulating federal agencies never specifically mentioned government corporations, it was possible to argue that such corporate units were excluded. Again, the Comptroller General's post was not created until 1921, and it took that office some time to develop a policy with regard to government corporations.

All these conditions have now changed. The extensive use of the corporate device by the New Deal has made the corporation as familiar a government agency as the independent commission. Statutes dealing with the management of the federal service are now regularly made applicable in specific terms to corporations owned by the government. Finally, the Comptrol-

[39] *Re Alabama Power Co.*, 4 P.U.R. (N.S.) 233, 259, July 14, 1934.

[40] Alabama, *Laws*, 1935, Chap. 1.

[41] Tennessee, *Acts*, 1935, Chap. 42; see *Re Tennessee Public Service Co.*, 5 P.U.R. (N.S.) 449, 456, October 25, 1934.

ler General has developed a firm policy of making no exceptions in dealing with corporate agencies. The result is that corporations can now expect exemption from the civil service, from government audit, from statutes relating to the expenditure of funds, or from any other regular government obligations, only if Congress makes definite enactments to such effect.

This development should not be regretted, however, even by those who have been most sanguine as to the administrative potentialities of the public corporation. If the present civil service system is defective, if government purchasing procedures limit administrative discretion unduly, or if the Comptroller General's audit is unsound in principle and undesirable in effect, then the proper course of action is to remedy these defects throughout the entire federal service, rather than to exempt a few incorporated agencies from their requirements.[42] But if it is agreed that incorporation should not be employed merely for the purpose of escaping government regulations, the device clearly remains as a valuable instrument for giving financial autonomy and release from governmental immunities to enterprises of a commercial or proprietary nature.

Finally, it should be pointed out that although the TVA has in most respects been unable to profit by its corporate status, in certain ways its form of organization has aided in the prosecution of its program. The fact that the Authority was set up as an *ad hoc* corporate entity, outside the regular departmental system, has given it an unusual opportunity to explore the possibilities in the development and administration of a regional program by a decentralized governmental agency. The Authority's task has been easier because its center of gravity has been within the Tennessee Valley. Decisions have been made, with a few major exceptions, in Knoxville and not in Washington.

As a bureau in a regular government department the TVA would have inherited departmental jealousies, preconceptions, and administrative routine. As an independent corporation it has developed an original approach to the problem of regional development, has brought a wide variety of functions within the control of one operating organization, and has won the coöperation of other public agencies in its program. It may well be that the experience of the TVA will transfer the emphasis from the procedural types of corporate administrative freedom to the more substantive types of freedom in policy making and execution, and to the potentialities of government corporations in facilitating a useful decentralization of federal administration.

[42] These reforms are included in President Roosevelt's plan for administrative reorganization, and embodied in S. 2700, 75th Cong.